

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

FINAL STATEMENT OF REASONS

Hearing Date: Not Applicable (No request from the public was received)

Subject Matter of Proposed Regulations: Supervision Regulations

Sections Affected: Title 16, Division 39, California Code of Regulations, Sections 4180, 4184, and 4187

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The Board decided not to pursue language to define the meaning of “Clinical Supervision” that was proposed in the initial text. The initial language proposed to incorporate the American Occupational Therapy Association’s (AOTA) document entitled “Standards for Practice for Occupational Therapy (Adopted 2010)” as a means to define “Clinical Supervision”. Comment provided by the AOTA indicated “The Standards for Practice for Occupational Therapy” do not contain a definition for “clinical supervision” and the document was not intended, and should be interpreted as a means to define the type of supervision addressed in the proposed regulatory action. Therefore the Board deleted the initially proposed language in Section 4180(g). Since no modification is being proposed to existing Section 4180, the Board has omitted reference to Section 4180 in the “Order of Adoption” contained in this regulatory file.

The Board modified the title of Section 4187 from “Supervision Plan for Occupational Therapist” to “Occupational Therapy Assistants Serving in Administrative Positions”. The modified title better summarizes issues surrounding the proposed regulatory action. The text of Section 4187 was modified to eliminate the requirement that an employer, facility, or practice, draft and maintain a written supervision plan for occupational therapists that would be available upon request. The modified text simplifies and clarifies the Board’s intent that occupational therapy assistants shall be allowed to perform in administrative and management roles, but in settings only where it is permitted by law. This proposed regulatory action would allow an occupational therapy assistant to serve in an administrative, management, or leadership role, where permitted by law, and provide or render clinical services. However, in no way, shape, or form, shall this proposed regulatory action be construed as to mean or to allow an occupational therapy assistant who functions in an administrative, management, or leadership role, to render or deliver clinical services independently or autonomously without the oversight of an occupational therapist as specified in Business and Professions Code Section 2570.2(j) and California Code of Regulations Sections 4180, 4181, and 4182.

The Board is making a minor non-substantive change to the title of Article 9, to read “Supervision Standards” deleting the existing title “Supervision of Occupational Therapy Assistants, Limited Permit Holders, Students, and Aides.”

Local Mandate: None

Business Impact/Finding of Necessity: The Board is amending its initial statement. Since the proposed regulatory action no longer requires that a “Supervision Agreement for Occupational Therapist” to be drafted and maintained by a facility, business, small business, or practice, the Board is withdrawing its statement that the proposed regulatory action may result in a cost impact to business. The proposed regulatory action as modified will not have a significant adverse impact on business.

Consideration of Alternatives: No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to the affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Summary of Public Comments Received During 45-day Comment Period and Board Response:

The Board received one (1) comment during the 45-day comment period as follows:

1. **American Occupational Therapy Association (AOTA)**, dated November 28, 2011. In summary, the AOTA asked that language incorporating their “*Standards of Practice for Occupational Therapy*” be removed from the proposed regulatory because it was not designed to be applied or interpreted as means to define “clinical supervision” as proposed in the regulatory action. The AOTA also objected to initial language contained in Section 4187 requiring a supervision agreement for occupational therapists arguing that occupational therapists are autonomous practitioners and are allowed to practice without supervision. *Board Response: AOTA’s comments were found to have merit and the initially proposed language was modified and made available for public comment to address the concerns.*

Summary of Public Comments Received During First 15-day Comment Period and Board Response:

The Board received three (3) comments during the first 15-day comment period as follows:

1. **Alan de Mena, Occupational Therapy Assistant**, emailed December 16, 2012, expressing that occupational therapy assistants should be permitted to function in administrative roles and positions and occupational therapy assistants should not be professionally stifled. *Board Response: The proposed regulatory action does not prohibit occupational therapy assistants from functioning in an administrative, management, or lead roles, as long as it is in a setting where permitted by law.*
2. **JoAnn Schafer, Occupational Therapist**, emailed December 16, 2012, questioning if the proposed text regarding “aides” working with patients could be misconstrued (pertaining to the proposed deletion of Section 4184(d)). *Board Response: The proposed regulatory action is designed to eliminate a conflict in Business and Professions Code section 2570.2(a) that states “The occupational therapist or occupational therapy assistant is responsible for documenting the client’s record concerning the delegated client-related*

tasks performed by the aide.” The proposed regulatory action does not change or alter the ability of an occupational therapist or occupational therapy assistant to utilize an aide in the delivery of services or changes the supervision requirements for aides specified in 2570.2(a).

3. **AOTA**, dated January 3, 2012. Outlined concern that the modified language in Section 4187 could be construed in a way that would prohibit an occupational therapy assistant who is functioning in an administrative or supervisory role, from providing or rendering occupational therapy services. *Board Response: The modified regulatory language in Section 4187 was not intended to restrict an occupational therapy assistant who functions in an administrative, management, or leadership role, from also providing or rendering occupational therapy services under the supervision of an occupational therapist. The Board felt that another modification could be made to the language by deleting “shall only” and replacing it with “may” to address AOTA concerns. This resulted in a second modified text being noticed for public comments.*

Summary of Public Comments Received During Second 15-day Comment Period:

The Board did not receive any comments during the Second 15-day comment period.